In the Supreme Court
OF THE
United States

OCTOBER TERM, 1938

No. 302

FELT AND TARRANT MANUFACTURING COMPANY (a corporation),

Appellant,

vs.

JOHN C. CORBETT, FRED E. STEWART, RICHARD E. COLLINS, RAY L. EDGAR, and HARRY B. RILEY, as Members of the State Board of Equalization of the State of California; STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA, and U. S. WEBB, the Attorney General of the State of California,

Appellees.

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT.

JESSE H. STEINHART,
111 Sutter Street, San Francisco, California,
Amicus Curiae in Support of Appellant.

Subject Index

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To the Honorable Charles Evans Hughes, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

I.

OFFICIAL REPORT OF OPINION BELOW.

The opinion of the District Court of the United States for the Southern District of California, Central Division, from the decree of which Court this appeal is taken, is reported in 23 F. Supp. 186.

II.

JURISDICTION.

Probable jurisdiction was noted by this Court on October 10, 1938.

III.

STATEMENT OF THE CASE.

(a) Position of Amicus Curiae.

With the consent of counsel for appellant and appellees, and by leave of this Honorable Court, this brief is filed in support of the appeal of appellant from the decree of the District Court of the United States for the Southern District of California, Central Division, dismissing the bill filed by appellant in that Court. By said bill, appellant sought an injunction prohibiting the enforcement against appellant of the California Use Tax Act of 1935 (Cal. Stats. 1935, c. 361, as amended by Cal. Stats. 1937, cc. 401, 671 and 683), as construed and applied by appellees, upon the ground that said statute as so construed and applied constitutes a violation of Article I, Section 8, clause 3, of the Constitution of the United States, and of Sec-

tion 1 of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 13 of the Constitution of the State of California.

We have read the brief of appellant filed with this Honorable Court in support of its appeal, and concur in the views expressed therein. However, inasmuch as this case is one of great importance to all manufacturers and merchants throughout the United States and abroad who are engaged in selling merchandise in interstate commerce to California consumers, we beg leave to add our views to those expressed by the appellant. We are attorneys for Advertising Specialty National Association, Washington, D. C., the members of which association are engaged in making sales of tangible personal property in interstate commerce to purchasers for use in the State of California. One or more of these members although not engaged in doing business in the State of California, not qualified to do an intra-state business therein, and not subject to the jurisdiction of the State of California to tax, have had arbitrary assessments levied against them by appellees under the California Use Tax Act of 1935.

(b) Case One of First Impression.

So far as we have been able to ascertain, this case is one of first impression, involving as it does an attempt on the part of one State to assess a tax, directly or indirectly, against a vendor not subject to its jurisdiction to tax, where the tax attempted to be imposed against the foreign vendor is actually levied, according to the statute, upon the exercise of the privilege of use or storage of tangible personal property within the

taxing State by the purchaser, an entirely different party. We are, of course, familiar with the decision of this Honorable Court in *Henneford v. Silas Mason Co.*, 300 U.S. 577. That case involved the constitutionality of the Compensating Tax provisions of the Revenue Act of the State of Washington. (Wash. Stats. 1935, c. 180, tit. IV.) The Washington tax is levied upon the privilege of use or storage of chattels in that State. It is levied solely against the purchaser, no attempt being made either directly or indirectly to impose it on the vendor, whether domesticated or doing business in the State of Washington, or beyond its jurisdiction. We do not question the right of the State of Washington or of the State of California to levy a tax upon the privilege of use or storage as against the purchaser exercising the privilege when the chattel used or stored has ceased to be in transit. We do, however, seriously question the power of the State of California, or any other State, to levy such a tax against a vendor who is neither domesticated nor doing business in the taxing State, whether it be imposed directly or be imposed indirectly through the guise of imposing a personal liability on him for "a debt owed * * * to this State" in the amount of the tax which is "required to be collected" by him whether or not he is able to collect it.

As we have stated, we do not raise any question concerning the constitutionality of the California Use Tax Act of 1935, as amended, in so far as it imposes a tax upon the storage, use or other consumption of tangible personal property in the State of California, nor in so far as it provides that every person storing, using or

otherwise consuming such property in the State of California shall be liable for the tax imposed by that Act. We raise no question as to whether that tax is a direct property tax or an excise tax upon the privilege of use in the State of California. We must admit the propriety of the language of the late Mr. Justice Cardozo in *Henneford v. Silas Mason Co.*, 300 U.S. 577, at page 583:

> "A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the arena of debate."

(c) Real Question Involved.

The question involved in the instant proceeding, however, goes far beyond the ruling of this Honorable Court in the *Silas Mason Co.* case. We submit that this question is:

Has the State of California the power to create a debt owing to it by a vendor who sells tangible personal property in interstate commerce to purchasers for storage, use or other consumption in the State of California in an amount equal to a tax levied on the purchaser for the privilege of use, storage or other consumption within that State, where the vendor is not engaged in doing business and has transacted no intra-state business in California, has not qualified so to do and is not subject to the taxing jurisdiction of that State?

It is believed that to merely state the question is to require an answer in the negative. It is submitted

that the State of California has not the power to impose any tax upon the foreign vendor measured by the value of the tangible personal property sold by such vendor in interstate commerce and based upon its subsequent storage, use or other consumption in the State of California by the purchaser; nor has the State of California the power indirectly so to tax the foreign vendor by providing that the tax levied against the purchaser in interstate commerce shall constitute a debt owed by such foreign vendor to the State upon the ground that it can impose a duty on such foreign vendor to collect a like amount from the purchaser.

IV.

ARGUMENT.

(a) Opinion of Court Below.

The Court below apparently gave no consideration to this question or to the fact that so to attempt to tax a foreign vendor is beyond the power of the State. It first decided that the California Use Tax Act of 1935 "in so far as it imposes a Use Tax on personal property after the same has been brought into the State, does not violate either the Commerce Clause or the Fourteenth Amendment of the Federal Constitution" upon the authority of *Henneford v. Silas Mason Co.*, 300 U.S. 577, *Monamotor Oil Co. v. Johnson*, 292 U.S. 86, and *Bowman v. Continental Oil Co.*, 256 U.S. 642. It then stated:

> "Accordingly, there remains for consideration only the question whether the state may require the seller to collect such tax and in connection

therewith require the latter to conform to certain regulations in order to insure the collection of the tax.

We think this question must be answered in the affirmative. In this respect, we are unable to distinguish the statute here involved from the one upheld in the case of Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S.Ct. 575, 78 L. Ed. 1141. Nor are we able to perceive wherein the plaintiff's method of selling its comptometers to California purchasers entitles it to exemption from the application of this statute. The allegations of the bill respecting this phase of the case fully warrant the conclusion that plaintiff's method of doing business includes maintaining at least two places of business in California." (Page 191.)

The Court commented not on whether the appellant was subject to the jurisdiction of the State of California nor on the fact that it was a foreign corporation engaged solely in selling goods in interstate commerce and not qualified to transact intra-state business in the State of California, and which had not transacted such business as would subject it to the State's jurisdiction. It commented not on the fact that the tax which it had just held valid "in so far as it imposes a use tax upon personal property *after* the same has been *brought* into the state" and thus which only attaches after the title and possession has passed from the foreign vendor and after the interstate commerce has terminated, was to be now imposed against the foreign vendor with no interest in the property through the guise of making him liable to the State for a debt in the amount of the tax thereafter due from the purchaser when the latter

exercises the privilege that is taxed. The Court below merely considered itself bound by the decision of this Honorable Court in *Monamotor Oil Co. v. Johnson*, 292 U.S. 86. No such question of due process, of jurisdiction to tax, or of burden on interstate commerce was involved in that case.

(b) Case of Monamotor Oil Co. v. Johnson, 292 U.S. 86.

The Monamotor Oil Co., an Arizona corporation, was engaged in doing an intra-state business in the State of Iowa. The Iowa tax in question was one levied on all motor vehicle fuel used in that State. Although the tax was levied on the person using the fuel in Iowa, distributors such as the Monamotor Oil Co. who engaged in business in that State were required to pay the tax in advance for the privilege of selling and dispensing gasoline in Iowa. We quote from the opinion of the United States District Court, Southern District of Iowa, in that case below (3 F. Supp., 189 at page 199):

> "A distributor of gasoline has no inherent rights to sell and dispense gasoline in the state of Iowa and, on account of the nature of the product that he handles, the state has a right to require of him *in consideration of his right to dispense gasoline within the state* the administrative acts as provided by the statutes." (Italics supplied.)

(And see the brief of appellant herein, pages 17-20.)

The Monamotor Oil Co. was subject to the taxing powers of the State of Iowa. The tax levied could have been imposed in the first instance on the Monamotor Oil Co. whether it be a property tax, a sales tax or a

use tax. The property involved in that case had come to rest. No attempt was made by the State of Iowa to impose a tax upon a corporation not qualified to do business within the State and actually not engaged in doing business within the State.

This Honorable Court grounded its opinion in the *Monamotor Oil Co.* case upon its previous decisions in *Citizens National Bank v. Kentucky,* 217 U.S. 443 and in *Pierce Oil Corporation v. Hopkins,* 264 U.S. 137, and upon the decisions of the Supreme Courts of South Dakota and Arkansas in the cases of *Standard Oil Co. v. Jones,* 48 S.D. 482, 205 N.W. 72, and *Standard Oil Co. v. Brodie,* 153 Ark. 114, 239 S.W. 753, respectively. In each case the corporation objecting to the tax involved was actually engaged in doing an intra-state business within the jurisdiction of the State levying the tax. The *Citizens National Bank* case involved a Kentucky statute to back-assess the shares of stock in that bank located in Kentucky. The *Pierce Oil Corporation* case involved an Arkansas statute providing "that one who sells gasoline to be used by the purchaser in motor vehicles on highways of the State 'shall collect from such purchaser, in addition to the usual charge therefor, the sum of one cent (1¢) per gallon for each gallon so sold'." The claim was made that the act violated the due process clause. The Court stated at page 139:

> "A short answer to this argument is that the seller is directed to collect the tax from the purchaser when he makes the sale; and that a state which has, under its constitution, power to regulate the business of selling gasoline (*and doubtless, also,*

> *the power to tax the privilege of carrying on that business*), is not prevented by the due process clause from imposing the incidental burden." (Italics supplied.)

The Supreme Court of South Dakota, in passing on a similar gasoline license tax act of that State (*Standard Oil Co. v. Jones*, 48 S.D. 482, 205 N.W. 72, supra) stated:

> "Probably there is no more reason why an importer should pay the costs of collecting a consumer's tax than any other citizen, but if a fund is necessary *it may be collected from all or any class of citizen* provided it falls equally upon all of a given class." (Italics supplied.)

In passing upon the like Arkansas statute in *Standard Oil Co. v. Brodie*, 153 Ark. 114, 239 S.W. 753, the Court grounded the jurisdiction of the State to compel the distributor to collect the tax upon the inherent jurisdiction of the State over the distributor corporation:

> "It is next contended that the due process clause of the Constitution of this State and of the United States is violated by the requirement laid upon the dealers in gasoline to collect and pay the tax. It must be remembered that the tax is not laid on the sale of the gasoline, nor upon the business of the dealer. The dealer is not required to pay the tax, but to collect it, keep and present an account thereof, and pay it over to the county treasurer. The purpose of the statute is twofold, namely, to impose a tax upon the purchaser of gasoline for the use of the car, and to regulate the business of the dealer by requiring him to collect the tax and

pay it over to the county treasurer. *It is certainly within the power of the Legislature to regulate the business of selling gasoline,* and it is not an unreasonable regulation, for it does not involve the payment of any fee, nor the performance of any unreasonable task." (Italics supplied.)

In these cases the validity of imposing on the distributor the tax or the duty of pre-paying a tax which was to be borne by the purchaser, was based on the fact that the distributor in each instance was subject to the jurisdiction of the State to tax, doing business within the State. Did the State of California have the power to so tax Felt and Tarrant Manufacturing Co., or the thousands of other firms not engaged in doing an intra-state business in California and not qualified so to do, upon the interstate sale of tangible personal property to be stored, used or otherwise consumed by a purchaser within this State? We submit that it had no such power, even by indirection. (*Sonneborn Bros. v. Keeling,* 262 U.S. 506, 515.)

(c) Typical cases of Interstate Commerce.

May we suggest that if one compares the most common and simplest case of interstate commerce with the method adopted by appellant Felt and Tarrant Manufacturing Co. one may more readily realize the fact that the California Use Tax Act of 1935 is invalid in its application to the appellant and to all vendors not engaged in doing business in California and who are not subject to the jurisdiction of California for taxation.

Let us first present the cases:

Case No. 1. The X Company, incorporated in the State of New York, has all of its property in that State. It has neither merchandise nor a bank account in California. It has no salesmen, doing strictly a mail-order business. The customer, in the State of California, mails an order to the X Company at New York. The order is accepted at its office in New York. The merchandise manufactured there is mailed or otherwise shipped f.o.b. plant of manufacture from New York to the customer in the State of California direct, the latter in turn remitting by mail direct to New York. We believe that it would be admitted that Sections 6 and 7 of the California Use Tax Act were not intended to and could not apply to this transaction and that such tax as might subsequently be levied upon the use of the property in the State of California could not constitute a debt owed by the X Company to the State of California. Section 5 of the Act, however, even attempts to require that the X Company register with the appellee Board "and give the name and address of all agents operating in this State, the location of any and all distribution or sales houses or offices or other places of business in this State, and such other information as the Board may require." Section 21 also would require the X Company to "keep such records, receipts, invoices and other pertinent papers in such form as the Board may require", the Board being "authorized to examine the books, papers, records and equipment * * *" and to investigate the character of the business of the X Company. Failure to comply

with any of these provisions constitutes a misdemeanor. We would state in passing that we believe the requirements of these sections to be unconstitutional in imposing a tremendous and unreasonable burden on strictly interstate commerce. These provisions, by their terms, are to be applied to all vendors selling chattels in interstate commerce for storage, use or other consumption in California, whether or not the vendor is doing business in California or is in any other way subject to the jurisdiction of the State of California.

Case No. 2. Let us next consider a method of doing business identical in every respect with that involved in Case No. 1, except that the Y Company in this instance has salesmen who travel through the State of California soliciting orders which are mailed by them rather than by the customer direct to the Y Company in New York. The method of shipping the merchandise and making remittance is likewise identical with that set forth in Case No. 1. We believe that the holding in this case would necessarily be identical with the holding in Case No. 1, and that Sections 6 and 7 of the California Use Tax Act would not apply. Certainly, in neither of these cases would the X Company or the Y Company be required to qualify as a foreign corporation in the State of California, nor could either of them be subjected to a franchise or other excise tax levied by the State of California on corporations doing business therein.

Case No. 3. Let us now suppose that the Z Company does business in the identical manner adopted by the

Y Company in Case No. 2, except that the Z Company rents an office in the State of California for the use of its salesmen. The office is not used as a salesroom, no merchandise is stored or exhibited there, it being used solely for the convenience of its salesmen in the receipt of mail and in the preparation and dispatch of orders by mail. Can this single fact permit the State of California arbitrarily to impose on the Z Company the duty of collecting the tax levied pursuant to the Use Tax Act of 1935, as amended, and this at its peril, —"The tax herein required to be collected by the retailer shall constitute a debt owed by the retailer to this State." We would submit that any attempt to impose the obligations of the California Use Tax Act upon the Z Company engaged in business in the manner just outlined, and particularly the obligation of guaranteeing and pre-paying a tax, constitutes an unreasonable deprivation of property without due process of law as well as an interference with and unreasonable burden on interstate commerce. In the first place, the Z Company is not subject to the jurisdiction of the State of California. In the second place, the Z Company has not done any act whatsoever which is not directly connected with interstate commerce. The State of California can not levy any direct taxes on the Z Company, whether measured by or arising out of its business or otherwise, in view of the fact that it is not subject to the jurisdiction of the State to tax and interstate commerce alone is involved. It is submitted that the State cannot under the guise of attempting to compel it to collect a tax from its customer actually make it guarantee the collection of such tax

and hold it liable in debt for the amount owed by the purchaser to the State, further subjecting it to the numerous penalties, both civil and criminal, contained in the Act.

(d) **Conclusion.**

We do not question the validity of the California Use Tax Act of 1935 in its application to the purchaser. We raise no question of due process where the vendor has qualified to do business in the State of California or where it has by actually engaging in doing business in the State subjected itself to the jurisdiction of the State to tax it. We maintain, however, that any construction of the clause "Every retailer maintaining a place of business in this State", as used in Sections 6 and 7 of the Act, that would include within such terms and subject to the obligations set forth in said Sections a foreign vendor engaged solely in interstate commerce subjecting it to the jurisdiction of the State, is invalid, even though the foreign vendor rents an office in California for the convenience of its salesmen engaged solely in interstate transactions. Any attempt to impose upon such foreign vendor the obligation of a debt in the amount of such tax as may be due from its purchaser merely by reason of the renting of such an office would constitute a deprivation of property without due process of law and a denial of the equal protection of the law. To apply the provisions of Sections 6 and 7 of the California Use Tax Act to such foreign vendor constitutes an attempt on the part of the State of California to reach beyond its jurisdictional limits to tax

an undomesticated foreign corporation, whether it be called a collector, a guarantor or a debtor. We deem it an unreasonable exercise of process to make this foreign vendor a guarantor of the purchaser's tax,—a tax which the vendor may never be able to collect from the purchaser, or to make the vendor a debtor merely because its salesmen avail themselves of the convenience of the use of an office in the State. We have been unable to find any authority with such far-reaching implications. The only pertinent cases which have come to our attention have been grounded on the theory that a person upon whom the task of collection was imposed was subject to the jurisdiction of the State and could have been taxed in the first place. To impose upon the foreign vendor the various obligations and to subject it to the numerous penalties contained in the Act (see Appellant's Brief, pages 5-7, 53-71) will, we submit, not only arbitrarily deprive it of its property without due process of law since it has not voluntarily subjected itself to the jurisdiction of the State to tax (*Cheney Bros. Co. v. Massachusetts*, 246 U.S. 147 and *Sonneborn Bros. v. Keeling*, 262 U.S. 506, 515), but will likewise constitute an unfair and improper burden on interstate commerce. The term "maintaining a place of business", as used in the Act, must mean maintaining such a place of business for the purpose of or using it in connection with the doing or transacting of an intra-state business in the State of California so as to subject the person maintaining the place of business to the jurisdiction of the State of California to tax. We need not cite any authorities

in support of the rule requiring the adoption of such an interpretation as will render the provisions of the sections in question constitutional rather than invalid.

There can be no question but that the entire transaction indulged in by the Z Company, as well as by Felt and Tarrant Manufacturing Co., is one in interstate commerce. To charge the foreign vendor with the various obligations and to subject it to the numerous penalties which may be exacted is to provide that it engages in interstate commerce at its peril if its salesmen avail themselves of an office in the State of California, even though they be engaged solely in interstate commerce. It is submitted that the requirements of these sections and the penalties imposed will seriously burden interstate commerce. The foreign vendor must at its peril make certain that the chattels which it may ship to any purchaser in the State are sold for resale or for use outside of the State, although those facts in many instances may not be determinable until long after the vendor's only connection with the transaction shall have ceased. Then, upon the storage, use or other consumption of the tangible personal property in California, after the interstate commerce has ended, the foreign vendor whose only connection with the transaction was in interstate commerce and whose sole connection even with that phase of the transaction has long since ended, may find itself subjected to a substantial tax under the guise of a debt upon which may be superimposed interest charges and penalties, all of which may be summarily assessed against it, it being in the meanwhile guilty of a misdemeanor. The State

of California has no such extraterritorial jurisdiction as would enable it so unreasonably to burden interstate commerce.

Dated, San Francisco, California,
December 7, 1938,

Respectfully submitted,

JESSE H. STEINHART,
Amicus Curiae in Support of Appellant

Due service and receipt of a copy of the within is hereby admitted

this_____day of December, 1938.

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Attorneys for Appellant.

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Attorneys for Appellees.

SUPREME COURT OF THE UNITED STATES.

No. 302.—October Term, 1938.

Felt and Tarrant Manufacturing Co., Appellant, *vs.* Andrew J. Gallagher, Fred E. Stewart, Richard E. Collins, et al., etc.

Appeal from the District Court of the United States for the Southern District of California.

[January 30, 1939.]

Mr. Justice McReynolds delivered the opinion of the Court.

Appellant seeks an injunction prohibiting the state officers from enforcing against it the California Use Tax Act of 1935. (Cal. Stat. 1935, Ch. 361, as amended by Cal. Stat. 1937, Ch. 401, 671 and 683.) Counsel do not question the right of the state to collect this tax from the user, etc., but they say that, in the circumstances here disclosed, the officers may not compel appellant to serve as an agent for collecting the tax as they are threatening to do.

The trial court, three judges, dismissed the bill upon motion.

It appears—

Appellant, an Illinois corporation, is engaged in manufacturing and selling comptometers in that state and delivering these to purchasers in various parts of the Union. As stated by the court below its method of doing business with respect to California purchasers is substantially as follows:

"Pursuant to a separate contract made with each, the exclusive right to solicit orders in California is granted to two general agents, each of whom is allotted a separate section of the State. Under this contract the only compensation paid to a general agent consists of commissions on sales made. Each general agent may employ sub-agents and also a demonstrator for the purpose of demonstrating and instructing respecting the comptometers, provided such employment is approved by plaintiff. Likewise, plaintiff agrees by this contract to pay the rent of an office for each general agent, provided the lease to the same has been approved by it, such office to be used exclusively in furthering its business: also agrees to pay part of the traveling expenses incurred by each general agent, his sub-agents and demonstrators while traveling on business trips authorized by plaintiff, and also to reimburse each general

agent to the extent of part of the monies advanced to a sub-agent and, in addition, in the amount of $40.00 per month toward the salary of a demonstrator. Plaintiff assumes no other financial obligation with respect to sub-agents and demonstrators. Under this contract the general agent must devote his entire time and attention to soliciting orders for plaintiff. All orders taken must be submitted to and approved by plaintiff, all sales and deliveries must be made by, and all bills for such orders as are accepted must be rendered by, the plaintiff. The general agent is prohibited from making collections and all payments must be made directly to plaintiff. The contract further requires the general agent to maintain certain records, and make certain reports and make a specified minimum number of calls on prospective customers."

And further "That each of these two general agents maintains an office in this State, the lease to such office designating the plaintiff as lessee therein, the rent for the same being paid by plaintiff, while all other expenses of maintaining such office are paid by the general agent. As soon as an order is accepted a particular machine is appropriated for that purpose in plaintiff's shipping department in Illinois. All machines sold for delivery in California are shipped from one of plaintiff's distributing points outside of the State. Sometimes machines are forwarded directly to the purchasers, while in other instances, in order to secure reduced freight charges, large groups of machines are shipped to the general agent who makes delivery to the respective purchasers. The only machines kept by plaintiff in California are those used as demonstrators. Plaintiff has never qualified to do intrastate business in California."

The Use Tax Act [sec. 6] directs retailers maintaining a place of business in the state, and making sales of tangible personal property for storage, use or other consumption therein, to collect from the purchaser the tax imposed.

Appellant presents for our consideration two points: (1) The statute as construed and applied by the appellees to the appellant is repugnant to Art. I section 8 clause 3 of the Federal Constitution. (2) The threatened enforcement of the statute would deprive appellant of his property without Due Process of Law contrary to the Fourteenth Amendment.

The argument is this—

The appellant, an Illinois corporation, carried on no intrastate operations in California and is not subject to its jurisdiction. Such business as it transacts in California is interstate in character. California, therefore, lacks the power to require it (1) to act as the state's collecting agent with respect to use tax which may be

come due from California storers, users or consumers, or (2) to insure payment of such tax if it fails to make collections from the tax debtors, or (3) otherwise to act as a "retailer" as defined by the Act and the appellees. The treatment of the appellant as a retailer subject to the provisions of the California Use Tax Act is a direct burden upon interstate commerce prohibited by the Federal Constitution. Numerous provisions of the statute, if applied, would deprive appellant of its proerty without due process of law.

The trial court thought that both contentions were foreclosed by what was said and ruled in *Bowman, et al.* v. *Continental Oil Co.*, 256 U. S. 642, 650, *Monamotor Oil Co.* v. *Johnson, et al.*, 292 U. S. 86, 93, 95, and *Henneford, et al.* v. *Silas Mason Co., et al.*, 300 U. S. 577, 582, 583. And we agree with that conclusion.

Henneford v. *Silas Mason Co.* upheld a Washington statute similar to the one under consideration. The opinion declared (pp. 582, 583)—

"The tax is not upon the operations of interstate commerce, but upon the privilege of use after commerce is at an end.

"Things acquired or transported in interstate commerce may be subjected to a property tax, non-discriminatory in its operation, when they have become part of the common mass of property within the state of destination. . . . This is so, indeed, though they are still in the original packages. . . . For like reasons they may be subjected, when once they are at rest, to a non-discriminatory tax upon use or enjoyment. . . . A tax upon the privilege of use or storage when the chattel used or stored has ceased to be in transit is now an impost so common that its validity has been withdrawn from the arena of debate."

Bowman v. *Continental Oil Company* recognized the right of the state to require a distributor "to render detailed statements of all gasoline received, sold, or used by it, whether in interstate commerce or not, to the end that the State may the more readily enforce said excise tax to the extent that it has lawful power to enforce it as above stated."

Monamotor Oil Co. v. *Johnson* upheld an Iowa statute. The complainant there sought an injunction prohibiting tax officers from requiring the distributor of motor oil received from another state to pay into the state treasury the tax levied upon the consumer. This Court said (pp. 93, 95), "There is no substance in the claim that the statutes impose a burden upon interstate commerce, ... The statute in terms imposes the tax on motor ve-

hicle fuel used or otherwise disposed of in the state. Instead of collecting the tax from the user through its own officers, the state makes the distributor its agent for that purpose. This is a common and entirely lawful arrangement. . . . The statute obviously was not intended to reach transactions in interstate commerce, but to tax the use of motor fuel after it had come to rest in Iowa, and the requirement that the appellant as the shipper into Iowa shall, as agent of the state, report and pay the tax on the gasoline thus coming into the state for use by others on whom the tax falls imposes no unconstitutional burden either upon interstate commerce or upon the appellant."

The challenged judgment must be affirmed.

Mr. Justice ROBERTS took no part in the consideration or decision of this cause.

A true copy.

Test:

Clerk, Supreme Court, U. S.